

***IN THE UNITED STATES PATENT AND TRADEMARK OFFICE***

Applicant: Peter PERSOONE et al.  
Title: AN INFRA-RED REFLECTING LAYERED STRUCTURE  
Appl. No.: 10/533,890  
International Filing Date: 10/23/2003  
371(c) Date: 07/01/05  
  
Examiner: Ling X. Xu  
Art Unit: 1794  
Confirmation Number: 9698

**REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT  
UNDER 37 C.F.R. §1.705**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Applicants respectfully request reconsideration of the Patent Term Adjustment (PTA) determined for the captioned patent application.

The Patent Office determined that the patent was entitled to 281 days of PTA. Applicants believe that this PTA determination was made in accordance with the “Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. §154(b)(2)(A)” published at 69 Fed. Reg. 34238 (Jun. 21, 2004). Under that interpretation of the PTA statute, any PTO delay under 35 U.S.C. § 154(b)(1)(A) is deemed to overlap with any 3-year maximum pendency delay under 35 U.S.C. § 154(b)(1)(B), and so, as a practical effect, PTA may be awarded under §154(b)(1)(A) or §154(b)(1)(B), but not both.

On January 7, 2010, the U.S. Court of Appeals for the Federal Circuit affirmed the September 30, 2008 decision of the United States District Court for the District of Columbia finding that the U.S. Patent and Trademark Office’s interpretation of the PTA statute is incorrect.

*Wyeth v. Kappos*, No. 2009-1120 (Jan. 7, 2010). The Federal Circuit determined that "[b]efore the three-year mark, no 'overlap' can transpire between the A delay and the B delay," and that "[i]f an A delay occurs on one day and a B delay occurs on a different day, those two days do not 'overlap' under section 154 (b)(2)."

Applicants have recalculated PTA for the captioned patent under the court's interpretation of the PTA statute, and have determined that the patent is entitled to 534 days PTA, as shown on the attached sheet, which shows the relevant delays under 37 CFR §§1.702(a) and (b), and under 37 CFR §§1.703(a) and (b).

The attached sheet details the circumstances during the prosecution of the application resulting in the patent that constitute a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in § 1.704.

(a) Total of non-overlapping PTO delay under §154(b)(1)(A) & (B):	656 days
(b) Total Applicant delay:	122 days
Final PTA Determination:	534 days

Applicants therefore respectfully request that the patent be accorded 534 days PTA.

The patent is not subject to a terminal disclaimer.

Payment of the requisite fee is submitted herewith. Should no proper payment be enclosed herewith, as by the credit card payment instructions in EFS-Web being incorrect or absent, resulting in a rejected or incorrect credit card transaction, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741.

However, because this PTA error is due to a Patent Office error in interpreting and applying the PTA statute, a refund of the fee is respectfully requested.

Respectfully submitted,

By \_\_\_\_\_

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Registration No. 34,371

Date: January 15, 2010

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## Patent Term Adjustment Calculation System

Docket Number: 016782-0327  
 Application Number: 10/533890  
 Patent Number: N/A

Event Description	Event Date	Days from Filing	PTO Days	Applicant Days
Priority Date	11/05/2002	-912		
International Filing Date	10/23/2003	-560		
PCT National Stage Commencement Date	05/05/2005	0		
National Stage Entry (All 371(c) Requirements Met)	07/01/2005	57		
14 month From Application date	09/01/2006	484		
Restriction Requirement	10/09/2007	887	403	
Restriction Requirement Response Received at PTO	11/09/2007	918		
Non-Final Office Action	02/13/2008	1,014		
3 Year Period Starts	05/05/2008	1,096		
Non-Final Office Action Rsp. Rcv'd at PTO	05/13/2008	1,104		
Final Office Action	07/14/2008	1,166		
Final Office Action + 3 months	10/14/2008	1,258		
Request For Continued Examination (including amendment)	01/13/2009	1,349	253	91
3 Year Period Stopped	01/13/2009	1,349		
Non-Final Office Action	01/22/2009	1,358		
Non-Final Office Action Rsp. Rcv'd at PTO	04/22/2009	1,448		
Final Office Action	05/29/2009	1,485		
Final Office Action + 3 months	08/29/2009	1,577		
Final Office Action Response Received at PTO	09/29/2009	1,608		31
Notice of Allowance	10/19/2009	1,628		
Projected Patent Grant Date	04/27/2010	1,818		
		Totals:	656	122
		PTA:	534	

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IP: 10.14.44.164

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